IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4665 of 1996
with
Civil Application No. 9603 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DHRANGADHRA CHEMICAL WORKS LTD

Versus

UNION OF INDIA

Appearance:
MR VIMAL M PATEL for NANAVATI ASSOCIATES for appellant
MR UM SHASTRI for Respondent No. 1, 2

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA
Date of decision: 12/04/99

ORAL JUDGEMENT (Per J.N. Bhatt, J.):-

1. Admit. Mr. U.M. Shastri, learned advocate waives service on behalf of the respondent Nos.1 and 2. Upon the joint request of the parties, the matter is taken up for final hearing today.

2. In this appeal under section 23 of the Railway Claims Tribunal Act, 1987, against the judgment and order, dated 1.8.1996, recorded by the Railway Claims Tribunal, Ahmedabad Bench, in Claim Application No. 77 of 1990, the only, short, question which has been raised for our examination and adjudication is as to whether the impugned judgment of the Tribunal, deciding preliminary issue on question of bar of the provisions of Section 78B, is justified?

3. Firstly, it is an admitted fact that the appellant/ original applicant before the Tribunal had made a demand and intimation by writing a letter dated 7.5.1987, produced at Annexure A, whereby, the appellant informed the respondents/railway authority about the coal supply Movement of November 1986 - Charged by high rate of railway freight - Account Dhrangadhra Chemical Works Limited, Dhrangadhra. The Railway charged freight at the enhanced rate which came into effect from 1.12.1986 and the same came to be deposited under protest by the appellant, whereas, the case of the appellant has been that the wagons which were booked had been loaded in November 1986 and, therefore, there was no liability on its part to pay higher freight rate and charging of higher freight rate is unauthorized and illegal and on account of that it has suffered a loss of about Rs.1,28,000/- Therefore, after giving notice under section 80, the claim came to be filed before the Tribunal, which came to be dismissed on the aforesaid ground, while deciding the preliminary issue about bar of the provisions of Section 78B.

4. Provisions of Section 78B read as under:

"78B. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction, damage, deterioration or non-delivery of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf -

(a) to the railway administration to which the animals or goods were delivered to be carried by railway, or

(b) to the railway administration on whose railway the distinction station lies, or the loss, destruction, damage or deterioration occurred,

within six months from the date of delivery of the animals or goods for carriage by railway:

Provided that any information demanded or inquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned above by or on behalf of the person within the said period of six months regarding the non-delivery or delay in delivery of the animals or goods with particulars sufficient to identity the consignment of such animals or goods shall, for the purpose of this section, be deemed to be a claim to the refund or compensation."

5. It could very well be seen from the aforesaid provisions that claim has to be made for refund or overcharge within a period of six months from the date of the delivery of the goods carried by railway. However, the proviso prescribes that any information, demand or inquiry made in writing from, or any complaint made in writing to, any of the railway administrations mentioned in the section, by or on behalf of the person, within the period of six months, regarding the non-delivery or delay in delivery of the goods, with particulars sufficient to identify the consignment of such goods shall, for the purpose of this section, be deemed to be a claim to the refund or compensation.

6. It is, therefore, very obvious that no prescribed form for notice or intimation was provided and hence the only question which requires to be considered is as to whether a person making the claim had, as such, made a claim, in writing, within the spell of six months from the date of the delivery of the goods. It is not in dispute that by registered letter dated 7/5/1987, the Divisional Commercial Superintendent, South Eastern Railway, Bilaspur, was informed within a period of six months, whereby, it was complained and intimated that the appellant has suffered, unnecessarily, a loss of an amount of Rs.1,28,000/- Despatch Note was dated 1.12.1986 and the date of loading was 28/29-11-1986, whereas, the aforesaid registered intimation was sent on 7.5.1987 which was, admittedly, received by the railways. So, it is, obviously, within a period of six months. This aspect has not been, seriously, examined by the learned tribunal while considering the preliminary issue of bar of section 78B of the Indian Railways Act, 1890, which has resulted into miscarriage of justice while passing the impugned judgment, whereby, claim came to be rejected on that technical ground.

7. In this connection, our attention was also

invited to a decision of the Honourable Apex Court in the case of Birla Cement Works v. G.M. Western Railways, AIR 1995 SC 1111, by learned advocate appearing on behalf of the respondents - Railways. After having considered the same, we are of the opinion that the said decision is of no help to the respondents. In that case, application of provisions of Section 17 (1) (c) of the Limitation Act was the main question. Of course, in that decision, the provisions of Section 78B of the Railway Act has been interpreted. In the light of the facts of the case, Section 78B of the Railway Act provides that a person shall not be entitled to refund of overcharge or excess payment in respect of the goods carried by railway unless his claim to the refund has been preferred, in writing, by him or on his behalf to the railway administration to which the goods were delivered to be carried by railway, within a period of six months from the date of delivery of goods by railway. In the light of the facts of that case, it was held that the said provision has application, in that case. So is not the factual scenario before us. The question before us is whether the claim notice could be said to have been made within a period of six months as stipulated in view of the written registered letter dated 7.5.1987 which was received by the railway within a period of six months which, clearly, stipulates all material particulars about the claim and it also, clearly, states that the fund for the excess freight collected from he appellant should be refunded. We are, therefore, of the opinion that the aforesaid intimation is nothing but a claim made under section 78B of the Railways Act which is not, correctly and properly, appreciated by the learned Tribunal. We are fortified in our view which we are going to take in this appeal by the decision of this Court in the case of Bhavnagar Chemical Works v. Union of India, 1993 (2) GCD 186 (Guj). Therefore, the impugned judgment of the learned Tribunal is required to be quashed and set aside and the matter is required to be remitted back for decision on merits about the claim made in the claim application.

8. In the result, the impugned judgment is quashed and set aside. The Railway Claims Tribunal is directed to decide the claim of the appellant/ original claimant, on merits, in accordance with law, as early as possible, in view of the fact that the old claim is pending. Since the Tribunal has disposed of the claim on the preliminary issue and has not entered into the merits of the claim, we have also not entered into the merits of the claim and it will have to be decided on its merits, in accordance with law, by the Tribunal in the light of the facts and circumstances of the evidence before the Tribunal.

9. The appeal is, accordingly, allowed. In the facts and circumstances of the case, no order as to costs.

10. In the civil application, no order as to costs.

(karan)